IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.V.K.BALI
&
THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 23RD NOVEMBER 2006 / 2ND AGRAHAYANA 1928

W.A.No.1170 of 2006(B)

AGAINST THE JUDGEMENT IN W.P.(C).34808/2005 DATED 23/12/2005
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APPELLANT: PETITIONER:-

KIRAN BABU, S/O.APPU,
BAPPAYIL HOUSE, ERANHIKKAL P.O.,
KOZHIKODE.

BY ADV.SRI.N.N.SUGUNAPALAN (SR.)
SRI.K.PRAVEEN KUMAR

RESPONDENT/RESPONDENT:-

THE CHIEF MANAGER,
KERALA FINANCIAL CORPORATION,
KOZHIKODE BRANCH, PAVAMANI ROAD,
KOZHIKODE.

BY STANDING COUNSEL SRI.V.B.UNNIRAJ.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 21/11/2006, THE COURT ON 23/11/2006 DELIVERED THE FOLLOWING:-

V.K.Bali,C.J. &
S.Siri Jagan,J.

W.A.No.1170 of 2006-B

Dated, this the 23rd day of November, 2006

JUDGMENT

V.K.Bali,C.J.

The appellant as petitioner in the original lis challenged proceedings of sale of his property in the writ petition. Briefly put, the facts leading to the filing of the writ petition are that the petitioner is in default of the loan of the Kerala Financial Corporation. In the year 2002, the respondent-Corporation granted him the benefit of One Time Settlement (OTS). On paying an amount of Rs.25.50 lakhs, the petitioner could get rid of the entire liability. The petitioner, however, would not stand to his commitments incorported in the OTS Scheme, thus constraining the respondent-Corporation to recover the original amount with interest from him. It is in the wake of these circumstances that the Corporation ventured to sell his property, for which a highest offer of Rs.66.5 lakhs was received. The outstanding amount against the petitioner at that time was

Rs.69,62,000/-. Despite the fact that the petitioner was a chronic defaulter, learned Single Judge yet accepted the request made by the petitioner to give one more opportunity and thus directed the respondents to inform the highest bidder that if he was interested, he should wait till 1.3.2006 without any conditions and without collecting any further amount from him and meanwhile the petitioner was to settle his liability even by entering into agreement for sale of the mortgaged property. If the liability was not settled by the petitioner by 28.2.2006, the Corporation was given liberty to sell the property to the highest bidder, who had made offer, if the highest bidder may at that time be also interested to purchase the property. The respondents were also directed to grant OTS benefit with reference to the current liability based on current norms treating the previous OTS Scheme as cancelled.

2. The petitioner, through his counsel, would yet insist upon paying that very amount which was settled in the OTS Scheme in 2002 and would offer at the most interest that may have accrued later on the said amount up till now. This, surely,

cannot be accepted. Once the petitioner has backed out from the payment schedule as settled in the OTS offered by the respondent-Corporation, it was open for the Corporation to claim the full amount. In the wake of these circumstances, learned Single Judge could not give a better direction than the one given. The petitioner should thank himself for that.

There is no merit in the Writ Appeal, which is hereby dismissed.

Sd/-
V.K.Bali
Chief Justice

Sd/-
S.Siri Jagan
Judge

vku/-

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